

# Eligibility for Public Defense Management Letter

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## Background Information

Washington State law (RCW Chapter 10.101 -- see Addendum A) governs the providing of public-defense services. This law states that “effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.” To be considered indigent under the law, a person must either:

- receive public assistance,
- be involuntarily committed to a public mental health facility,
- have an annual income, after taxes, of 125 percent or less of the current federally established poverty level<sup>1</sup>, or
- have insufficient available funds to pay the anticipated cost of counsel.

The law further defines how to calculate whether a person’s available funds are insufficient, including how to determine the anticipated cost of counsel and available funds.

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## Many Factors Affect Public-Defense Expenditures

In 1995, the City of Seattle will spend about \$5.5 million on public-defense services. Addendum B provides more detailed information on the City’s public defense costs from 1990-96.

How accurately OPD determines eligibility for public-defense services is only one of many factors which affect the amount the City spends on public defense. These factors include, but are not limited to, the following:

- the number of cases the City files in Seattle Municipal Court<sup>2</sup>;
- the number of defendants who are indigent under state law (see Addendum A);
- how carefully OPD follows State law in regard to

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<sup>1</sup> For a copy of the federal poverty guidelines, see Addendum C.

<sup>2</sup> This is driven by a number of complex factors, including, but not limited to: crime rates, the resources and policies of the police department and prosecutor’s office, etc.

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providing an effective public-defense (for example, in the interest of maintaining quality representation for defendants, in 1991 OPD raised the salaries of defense attorneys to make them more competitive with King County prosecutors' salaries);

- how the defense agencies handle their cases, including the proportion of cases they plead out at arraignment or in-take<sup>3</sup>;
- state laws and local ordinances which require stiff penalties for specific criminal violations (for example, Driving While Intoxicated) and provide complex sentencing guidelines to calculate these penalties, resulting in fewer cases being resolved at arraignment or in-take.

These factors reflect the fact that, as many officials pointed out to us, public defense is not an isolated function but a component of the complex criminal justice system. The policies and practices of law enforcement agencies, prosecution, the courts, jails, corrections, and probation interact with and affect the workload and the costs of public defense. The King County Executive has allocated \$100,000 in its 1995 budget to study how the practices of the Prosecuting Attorney's Office, the public defenders, and the courts interact with and affect each other's workload and costs and those of the rest of the criminal justice system.

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<sup>3</sup> For April 1995, approximately 23 percent of SMC cases pled out or were dismissed at arraignment or in-take. One expert with whom we spoke suggested that more cases might plead out at arraignment or in-take if a separate defense agency represented defendants at arraignment (instead of one that is assigned some portion of the clients who do not plead out). Another expert suggested that more of the pretrial work could be done without judges--as is the case in King County Juvenile court--which would save court costs. The City Attorney's office and SMC are currently conducting a pilot study with the goal of replacing most pretrial hearings with out-of-court "case-setting" conferences, which they believe could help create badly-needed jury trial court time.

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OPD's Indigency Determination Process

At in-take hearings or arraignment, OPD screeners interview all defendants who plead not guilty to determine what resources they have to pay for their own defense.<sup>4</sup> Based on this interview, the screeners determine whether the defendant is (1) ineligible for public defense, (2) eligible and unable to contribute, or (3) eligible but able to contribute. Ineligible defendants must hire their own attorney. OPD assigns eligible defendants to one of the three defense agencies and informs them how to contact their attorney. OPD requires eligible defendants who can contribute to the costs of their defense to sign a promissory note to help cover the costs of their defense. Screeners can, but only infrequently do, ask defendants they find initially eligible for public-defense services to provide additional verification documents for review (see Addendum C for OPD's financial verification form). Review of documents which the defendant submits may confirm or overturn the initial determination of eligibility. As Table I shows, the City of Seattle bears the full \$356 contract cost of public defense for a misdemeanor except in the case of defendants whom OPD finds able to contribute to the cost of their defense; these defendants pay between \$6 and \$356 of the cost, depending on the funds OPD finds they have available.

**Table I: Possible Outcomes of OPD's Eligibility Determinations for SMC Misdemeanors**

<b>Eligibility Determination</b>	<b>Possibility that further verification documentation may be requested</b>	<b>Cost to City of Seattle in 1995</b>	<b>Cost to Defendant</b>
Ineligible	No	Screening cost absorbed in OPD's overhead rates	Cost of hiring a private attorney
Eligible	Yes	\$356	None
Eligible but able to contribute	Yes	Difference between \$356 and defendant's contribution	Ranges from \$6 to \$356, depending on the person's Total Available Funds <sup>5</sup>

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<sup>4</sup> The interview takes place outside the courtroom (or outside the jail court for in-custody defendants). See Addendum C for a description of the interview process and calculations used to determine eligibility.

<sup>5</sup> See Addendum C

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## Scope and Methodology

In examining OPD's indigency determination process, we interviewed OPD personnel and observed the initial screening process for both in-custody and out-of-custody defendants. To obtain additional insight into public-defense costs and the nature of the defendants who receive public defense, we interviewed two Seattle Municipal Court judges, officials of the three public-defense agencies, personnel from the City of Seattle Law Department, and eligibility verification specialists from municipal courts in Portland, Oregon, and Tucson, Arizona. We also reviewed local and national reports on public-defense costs, including OPD's 1989 study of indigency determination and cost recovery and the King County Prosecuting Attorney's October 1994 report entitled "Public Defense and Prosecution Funding in King County - A System Out of Balance."

To help us evaluate the income characteristics of Seattle Municipal Court's client population and determine whether in-custody screening is cost-effective, we requested that OPD provide us with data, for both in-custody arraignments and in-take hearings, on: (1) the number of Seattle Municipal Court indigency determinations OPD made in 1994, (2) the outcomes of these determinations, (3) the number and dollar value of the promissory notes which defendants signed as a result of these determinations, and (4) the amount which OPD collected on these promissory notes. OPD provided us with data on the number of indigency determinations they made in 1994 and the outcomes of these determinations for all Seattle Municipal Court cases. They did not, however, categorize the data by whether the determinations took place at in-custody arraignments or in-take hearings, nor did they provide data on the number of promissory notes signed as a result of these determinations and the amounts collected on these notes. As a result, our conclusions regarding SMC's client population and the viability of the in-custody screening are based on observation and testimonial evidence. We performed our work between March and June 1995.

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## FINDINGS

OPD screeners appear to be effectively performing initial interviews of defendants--the key element in accurately determining eligibility for public-defense services. However, OPD could do more to enhance the quality of the information which the screeners gather by (1) working with Seattle Municipal Court to revise the Notice of Hearing form to request that defendants bring available financial documentation (for example, pay slips, income tax forms) to the initial interview and (2) emphasizing to defendants that, in signing the interview form, they are swearing to the truth of the information they have provided under penalty of perjury. We also found that Seattle Municipal Court defendants tend to be quite poor and that further verification of their financial status after the initial interview may not be cost effective.

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### Effectiveness of OPD's Initial Screening Interview

The effectiveness of initial screening interviews in accurately determining eligibility is highly dependent on the skill and experience of the individual screeners and on their ability to obtain accurate information from the interviewee in a fairly short time period. The five OPD screeners who work with Seattle Municipal Court defendants have an average of nine years' experience in their positions, with three having more than ten years' experience. The two OPD screeners we observed and interviewed appeared to be very effective at their jobs. They both showed an extensive knowledge of the local area -- including pay scales for various occupations, the clientele served by various educational programs and the funding for these programs, and the location of local businesses. The explanations they provided for their decisions reflected a high level of professional judgment and experience with Seattle Municipal Court defendants.

Our work highlighted the importance of the initial in-person financial interview to making accurate indigency determinations. A study, which OPD conducted in 1989 under a criminal justice block grant from the Washington State Department of Community Development, found the most effective means of obtaining financial information about a defendant was personal contact with the client. Third party sources, such as credit reports, tax inquiries, and employer contacts, proved far less effective in getting reliable information than simply asking the client to

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provide that information.<sup>6</sup> In performing this study OPD randomly selected 220 defendants over a three-month period for further verification of the information they provided during the initial screening interview. OPD staff sent letters to, and telephoned, each selected defendant, asking the defendant to verify income, public assistance, obligations, and expense information. OPD requested and received credit reports on 188 of the defendants and, in several cases, contacted the defendants' employers.

Officials from Multnomah County, Oregon, and Tucson, Arizona, confirmed that the initial interview is key to the success of an indigency determination program (see Addenda D and E for descriptions of their eligibility-determination processes). The Multnomah County official stated that, while there are a number of intangible benefits from the subsequent verification process, the initial screening interview is definitely the most effective part of Multnomah County's eligibility-determination process and accounts for the greatest portion of the dollar savings Multnomah County achieves by eliminating those not eligible for public defense. The Tucson official also stated that the in-person interview is critical to the success of the entire eligibility determination process.<sup>7</sup>

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Potential to Strengthen Initial Screening Process

In reviewing the initial screening process, we identified three actions OPD could take to improve the reliability of the information which defendants provide the screeners.

First, OPD could ask defendants who are not in custody to bring pay-check stubs (the statement of earnings and deductions usually attached to payroll checks) and copies of income tax records to the initial screening at the time of their arraignment or in-take.<sup>8</sup> This request could be part of or attached to the notice of hearing which the court sends to defendants before their arraignment or in-take hearing.<sup>9</sup> At present, OPD's policy is to ask only those

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<sup>6</sup> The information pertaining to the 1989 study is taken from the Final Report on Indigency Determination and Cost Recovery prepared by the King County Office of Public Defense.

<sup>7</sup> Tucson recently eliminated its in-person screening interview. The official with whom we spoke expected this action would adversely affect the efficiency and accuracy of the eligibility-determination process and cause an increase in public-defense costs.

<sup>8</sup> The 1989 OPD study found these to be the most effective documents for verification, with other documentary evidence of income and assets usually only substantiating the information in those documents.

<sup>9</sup> OPD officials told us that they would like to do this and have suggested it to Seattle Municipal Court officials in the past. See Addendum F for a copy of their proposed change.



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defendants who call their office ahead of time to bring verification documents with them to the screening interview.

Second, during the screening interview, OPD could direct its screeners to emphasize to defendants that by signing the affidavit and notification section of the interview form, they are certifying under penalty of perjury that the information they have provided is true and correct.

Third, if OPD decides to directly verify the information given them in the initial screening interview with financial institutions, state agencies, and credit bureaus, they may need to develop a new authorization statement for defendants to sign. According to the City Attorney's office, the authorization statement that is currently on the interview form does not provide proper authorization because it is not specific to the agency or organization from whom OPD would be requesting information.

<del>Subsequent verification may not be cost effective</del>	<p>According to OPD, of the 14,814 Seattle Municipal Court defendants they interviewed in 1994, only 507 (or 3.4 percent) were found to be not indigent and therefore were not eligible for public defense. Seventeen defendants were appointed attorneys by the court and 779 were found to be indigent but able to contribute. All the experts with whom we spoke, including two Seattle Municipal Court judges and supervising attorneys from both the City's Law Department, and the three defense agencies, agreed that the Seattle Municipal Court client population is generally impoverished, and most believed that the percent of public-defense clients who are not really indigent is probably very small. Hence, most believe further verification of the indigency determinations subsequent to the initial screening would probably not be cost effective. This is especially true for in-custody defendants.</p>
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A 1989 OPD study of verification found that with subsequent verification efforts, OPD could recover a portion of its public-defense costs from fifteen percent of defendants who, with the screening interview alone, would pay nothing. However, in this study, OPD used an initial screening process in which OPD obtained little or no documentation from defendants up front. If OPD had

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strengthened its initial screening process to require that defendants bring documents with them to the initial interview, then subsequent verification efforts would probably have resulted in smaller cost savings.

Present efforts to verify defendants' financial information after the initial screening are of limited value. Although, based on their professional judgment, screeners request verification documentation on a case-by-case basis, OPD has no system to track whether defendants submit the documentation which the screeners requested. The verification specialist has no way of knowing who has been asked to submit documentation and can only work with documentation which defendants voluntarily send to OPD. The verification specialist does not follow up on defendants who do not voluntarily comply with the screener's request for documentation. OPD would like to develop the ability to track these requests on their on-line database. This would allow the verification specialists to follow up on the screeners' requests for documentation. OPD officials estimate that it would cost around \$500-\$1,000 to develop this capability, primarily for additional computer programming.

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## Recommendations

Based on the results of our survey, we recommend that OPD institute the following process improvements to its indigency determination and verification process:

- Perform more verification up front by working with Seattle Municipal Court officials to revise the Notice of Hearing form to ask defendants to bring pay-check stubs and copies of income tax statements to the out-of-custody initial screening interview. To assess the effectiveness of this change, OPD should gather data on the number of defendants who bring documents with them to the initial screening interview, both before the change to the Notice of Hearing form is made and afterwards. To further evaluate the impact that the revised form may have on the indigency determination process, OPD should also compare changes in eligibility rates before and after the form is revised.
- During the screening interview, emphasize to defendants that by signing the affidavit and notification section of the interview form, they are certifying under penalty of perjury that the information they have provided is true and correct. OPD may even want to consider broadening the authority contained in the authorization statement found on the current interview form by having defendants sign a separate authorization form which would allow the office to verify the information directly with financial institutions, state agencies, and credit bureaus.
- Assess whether it would be cost-effective to (1) eliminate screening interviews for in-custody defendants and make them presumptively eligible for public defense and (2) go beyond pay-check stubs and income-tax statements in verifying financial information which out-of-custody defendants provide in the initial screening. If OPD elects to drop in-custody screening, perhaps OPD could divert some of the resources currently involved in this screening to test whether enhancing the verification of information provided by out-of-custody defendants would be cost-effective.

Finally, the Mayor and City Councilmembers may want

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to consider pursuing participation in the King County Executive's study of the costs of the various components of the criminal justice system and how they interact and affect one another. This participation would likely center on issues other than the indigency determination and verification process that may have a greater impact on public-defense costs; we identified some of these issues in the Background section of this report.

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## Agency Comments

We obtained written comments from both the King County Office of Public Defense (OPD) and the Seattle City Attorney's Office (see Addenda F and G for copies of their responses). We also obtained verbal comments from representatives of the City of Seattle's Office of Management and Planning, the three public-defense agencies who serve Seattle Municipal Court and the King County Budget Office.

OPD agreed with our description of the indigency determination and verification process. They concurred with our recommendations to: 1) revise the Notice of Hearing form to include a request that defendants bring verification documents with them to the initial screening interview, and 2) have the City participate in the King County Executive's study of the costs of the various components of the criminal justice system. Regarding our recommendation to emphasize to defendants that by signing the affidavit and notification section of the interview form, they are certifying under penalty of perjury that the information they have provided is true and correct, OPD stated that it is currently their policy to do so and they will confirm this policy with staff in the near future. Regarding broadening the authority currently contained in the authorization statement found on the current form, OPD pointed out that the current statement was developed by Washington State's Office of the Administrator of the Courts (OAC) and has been approved by the King County Prosecuting Attorney's Office. Finally, OPD stated that they would urge caution regarding total elimination of screening for indigency for in-custody defendants.

The City Attorney's Office generally agreed with our results and recommendations. Regarding the recommendation to assess whether it would be cost effective to eliminate screening interviews for in-custody defendants and make them presumptively eligible for public defense, the City Attorney's Office stated that they would be hesitant to adopt a policy which automatically gives all in-custody defendants a lawyer at public cost. Their response also lists the factors that they believe affect the level of public-defense expenditures and, where relevant, describes the efforts their office has made to address these factors.

## Addenda Addenda

Addendum A

Addendum A

### RCW Chapter 10.101 - Indigent Defense Services

#### CHAPTER 10.101 RCW

#### INDIGENT DEFENSE SERVICES

##### Sections

10.101.005 Legislative finding.

10.101.010 Definitions.

10.101.020 Determination of indigency--Provisional appointment--Promissory note.

10.101.030 Standards for public defense services.

10.101.040 Selection of defense attorneys.

**RCW 10.101.005** Legislative finding. The legislature finds that effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. [1989 c 409 § 1.]

**RCW 10.101.010** Definitions. The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

- a) Receiving one of the following types of public assistance: Aid to families with dependent children, general assistance, poverty-related veterans' benefits, food stamps, refugee resettlement benefits, medicaid, or supplemental security income; or
- b) Involuntarily committed to a public mental health facility; or
- c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or
- d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

"Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

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**RCW Chapter 10.101 - Indigent Defense Services**

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- (3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.
- (4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:
- a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.
  - b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.
  - c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.
  - d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations. [1989 c 409 § 2.]

**RCW 10.101.020** Determination of indigency--Provisional appointment--Promissory note.

- (1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.
- (2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

## RCW Chapter 10.101 - Indigent Defense Services

- (3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.
- (4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.
- (5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.
- (6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of the administrator for the courts, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter. [1989 c 409 § 3.]

**RCW 10.101.030** Standards for public defense services. Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services may serve as guidelines to contracting authorities. [1989 c 409 § 4.]

**RCW 10.101.040** Selection of defense attorneys. City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services. [1989 c 409 § 5.]



### Seattle Municipal Court - Cost of Indigent Defense Services - 1990-96

Year	Cost of indigent defense services	Percent change from previous year	Number of case credits	Percent change
1990	\$4,307,996	Not applicable	17,354	N/A
1991	\$4,968,033	+ 15.3 percent	15,929	- 8.2 percent
1992	\$4,683,811	- 5.7 percent	15,344	-3.6 percent
1993	\$5,231,455	+ 11.6 percent	15,877	+3.4 percent
1994	\$5,150,786	- 1.5 percent	15,714	- 1.0 percent
1995	\$5,533,037 (adopted budget)	+ 7.4 percent	To be determined	N/A
1996	\$5,721,160 (endorsed)	+ 3.3 percent	To be determined	N/A

According to OPD, there are a number of factors which contributed to the increased cost of defense services from 1990 - 1994, despite a decrease in case credits. A primary cost driver was a King County decision to fund defense attorneys comparably to prosecutors. A salary “catch up” plan, known as the Kenny Plan, was implemented during 1990 - 1992.

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### OPD's Eligibility Determination Process

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OPD screeners begin the eligibility determination process at arraignment or in-take by asking defendants for financial information during a screening interview. The screeners use this information to complete the OPD Client Interview and Assignment form.<sup>10</sup> Screeners ask questions to determine whether the defendant is presumptively eligible for public defense, such as whether the defendant receives public assistance or whether the defendant's annual income after taxes is less than 125 percent of the poverty level. They also ask for information on the person's monthly income, support obligations, monthly expenses other than basic living expenses,<sup>11</sup> and liquid assets.

From the information they obtain in the screening interview, screeners then calculate the defendant's disposable net monthly income (total income minus total expenses) and total available funds (disposable net monthly income plus total liquid assets). The amount of the defendant's total available funds determines whether the defendant is: 1) eligible for public defense (total available funds are less than or equal to zero), 2) ineligible (total available funds are greater than or equal to the total anticipated cost of counsel for the charge), or 3) eligible but able to contribute (total available funds are greater than zero or less than the anticipated cost of counsel). OPD assesses defendants in the third category a fee, basing the amount of the fee on the difference between what it costs OPD to assign them an attorney<sup>12</sup> and their total available funds. OPD requires them to sign a promissory note for this amount.

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<sup>10</sup> Copies of the King County Office of Public Defense Client Interview and Assignment form, the federal poverty guidelines used by OPD screeners, the 1995 promissory note schedule, a blank promissory note agreement and a financial verification form are attached to this addendum.

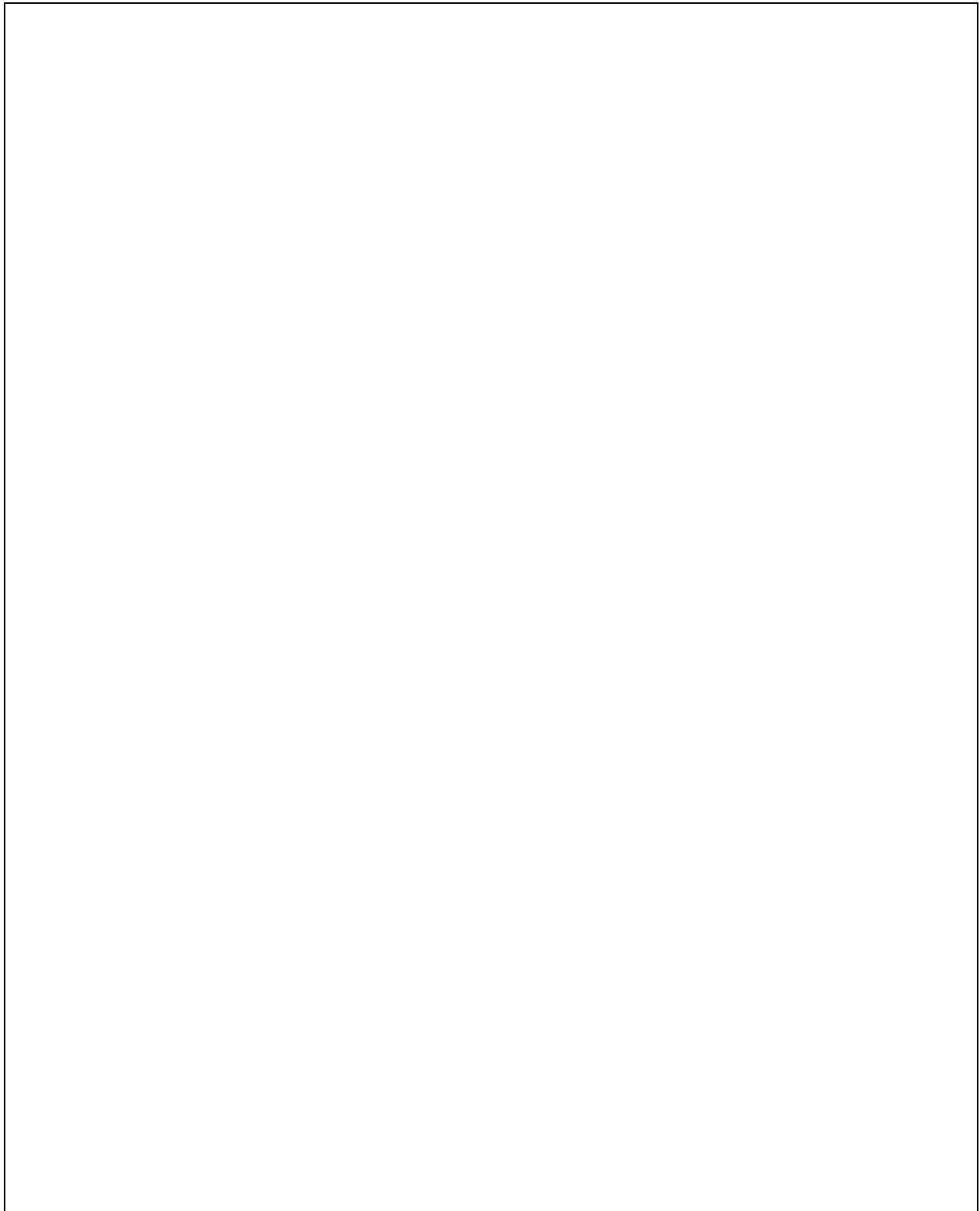
<sup>11</sup> Screeners calculate basic living expenses based on federal poverty guidelines and the defendant's household size.

<sup>12</sup> OPD establishes its costs, which vary by type of case, at the beginning of each calendar year.

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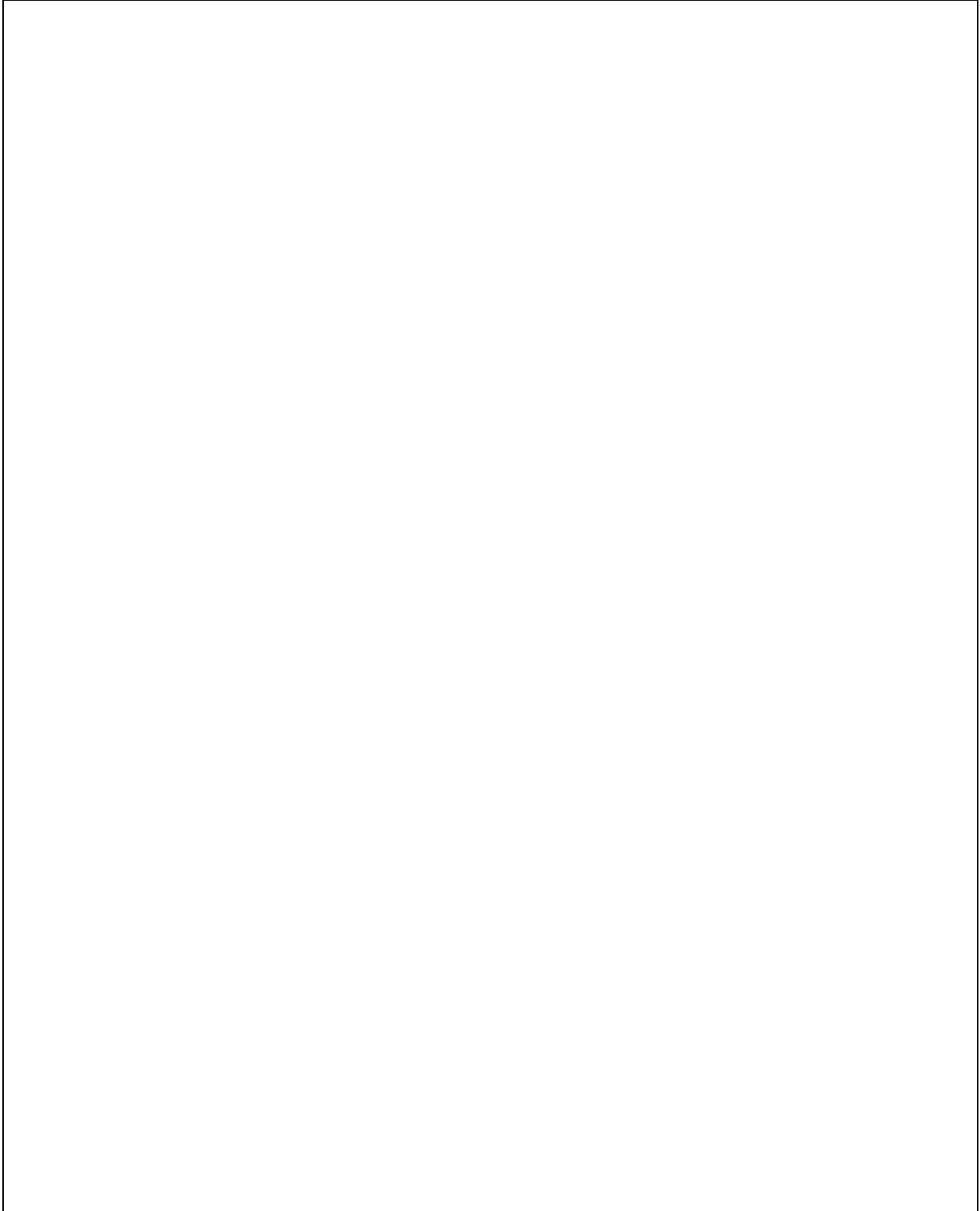
**OPD's Eligibility Determination Process**

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## OPD's Eligibility Determination Process

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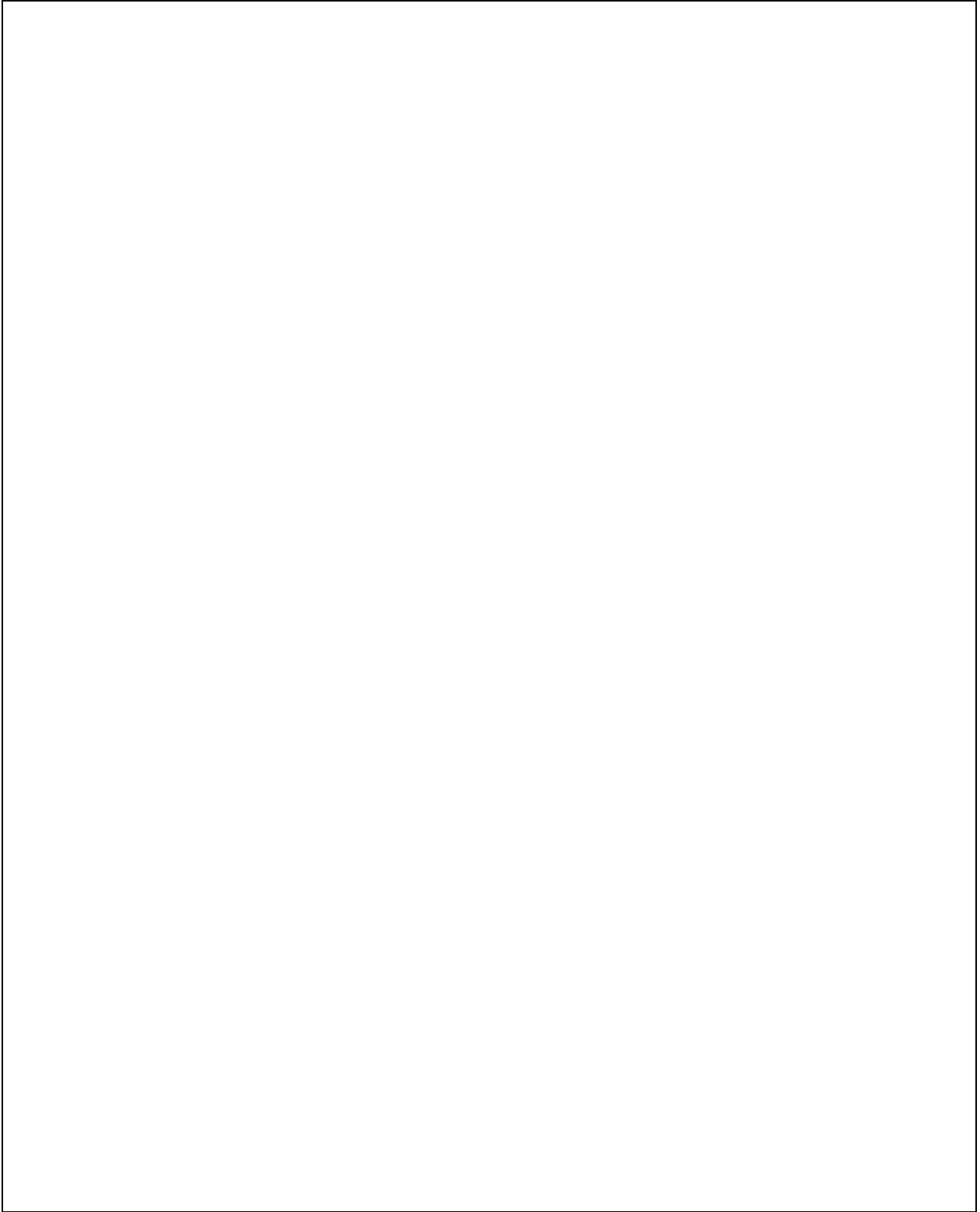
**Addendum C**

**Addendum C**

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## OPD's Eligibility Determination Process

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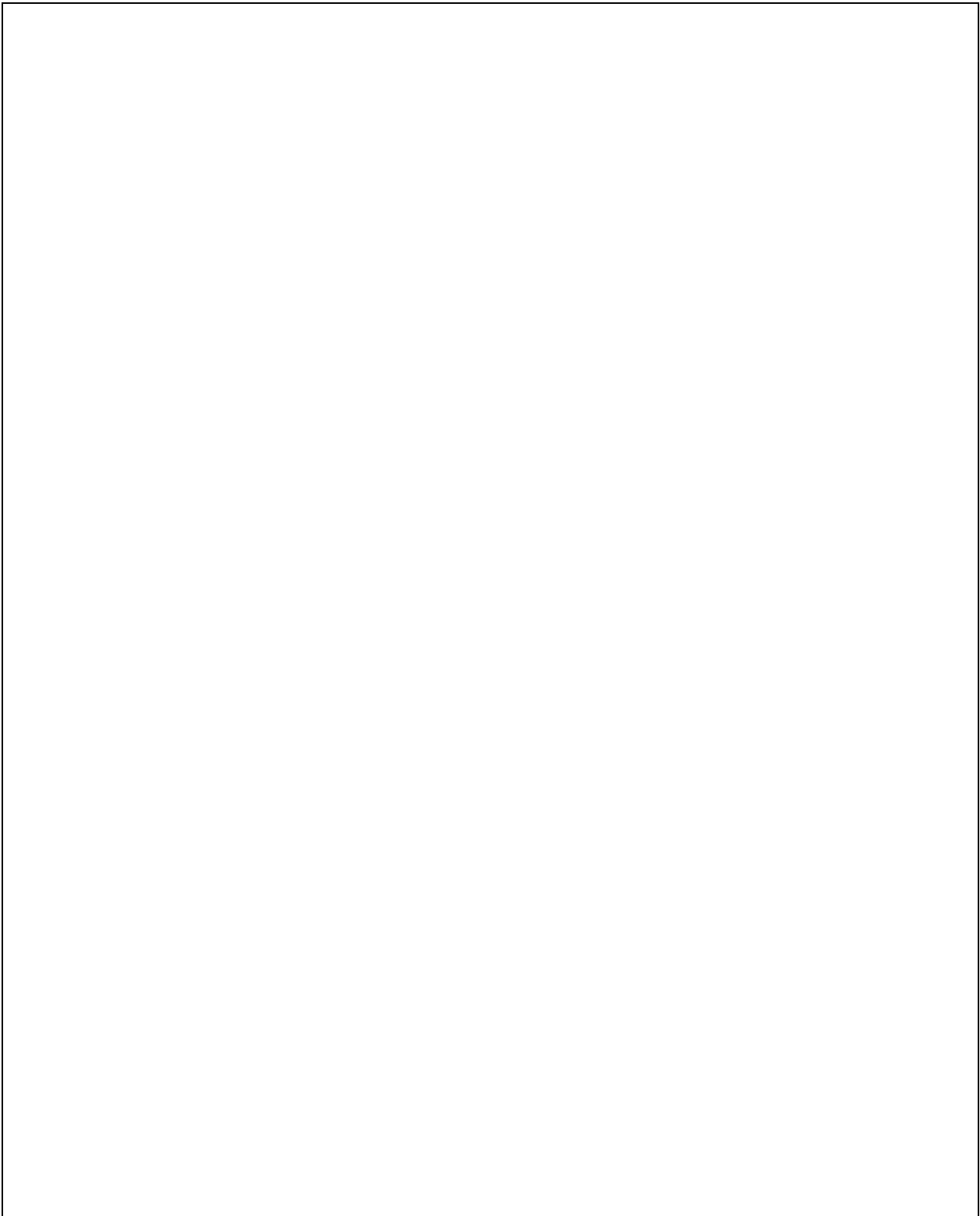
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## OPD's Eligibility Determination Process

**OPD's Eligibility Determination Process**



**Addendum C**

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**OPD's Eligibility Determination Process**

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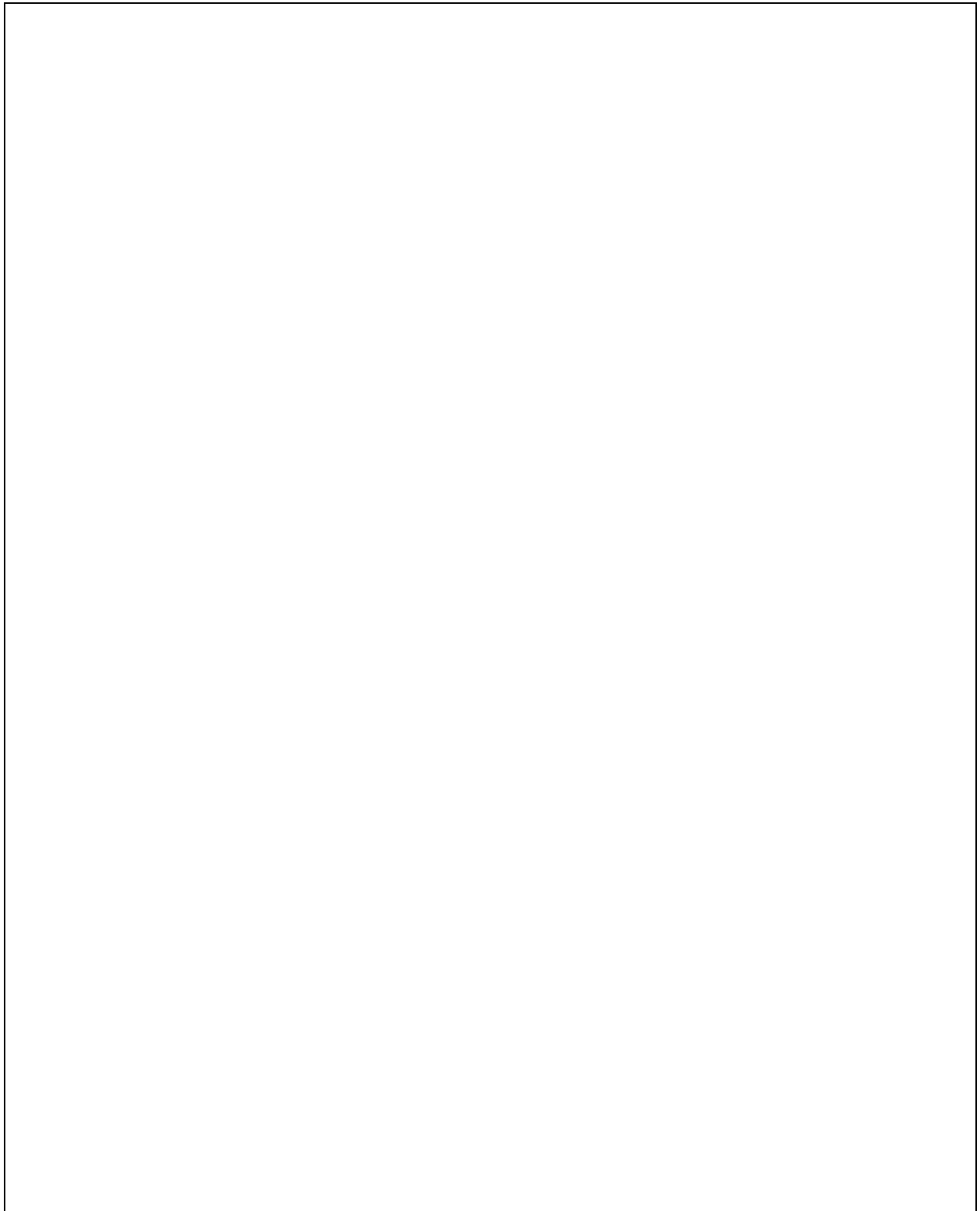




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**OPD's Eligibility Determination Process**

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### State of Oregon's Eligibility Determination Process

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Oregon's indigency-determination process begins at arraignment with an initial on-site financial screening conducted by a verification specialist.<sup>13</sup> After this interview, the judge receives a recommendation from the specialist regarding the defendant's eligibility for public defense and decides whether to appoint counsel. If the judge appoints counsel, the lead specialist reviews the screening interview and, based on her professional judgment, decides whether to seek further verification of the defendant's eligibility. The lead specialist selects about 35 percent of the cases for further verification. The verification process usually includes sending a letter to the defendant requesting additional information and also includes obtaining information directly from such sources as financial institutions, state employment records, county tax records, and credit bureaus. If the process develops information which disqualifies a defendant for whom a judge has previously appointed counsel, the verifier must send an affidavit to the Chief Criminal Justice stating a finding of ineligibility. After reviewing the finding, the Chief Justice can then order a show-cause hearing to allow the defendant to prove that he or she truly is indigent. Defendants who fail to prove indigency lose their right to a public-defense attorney. About 5.5 percent of the total monthly caseload lose their right to public-defense counsel as a result of the verification/show-cause hearing process.

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<sup>13</sup> All in-custody defendants are automatically appointed counsel.

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**Tucson (Arizona's) Eligibility Determination Process**

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In Tucson, Arizona, defendants who want a court-appointed attorney fill out a financial statement and a request-for-attorney form when they appear for arraignment. Based on this form, the judge then (1) orders appointment of counsel, (2) orders appointment subject to verification, or (3) (very rarely) denies appointment. In the majority of cases, judges order appointment subject to verification. Defendants then have three days to submit financial information to the eligibility office. If they don't submit information on time, the eligibility office denies them counsel based on lack of information. About two-thirds of the defendants comply with the requirement and bring information directly to the eligibility office. At this point, until recently, an eligibility specialist talked to the defendant in person, reviewed the documents and made sure that everything was in order. After this informal interview, the eligibility specialist made an eligibility determination based on the information provided or the lack of it. Eligibility specialists deny very few defendants counsel because of the financial information they provide. Rather, they generally determine defendants ineligible because of insufficient information. Just recently (May 1995), due to workload, Tucson has eliminated the in-person interview, and defendants now merely drop off their documents for review. The effect of this change is yet to be determined.

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**OPD's Response to Our Audit Report**

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**City Attorney's Office Response to Our Audit Report**

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